

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
)
Revision of Part 22 and Part 90 of the)
Commission's Rules to Facilitate Future)
Development of Paging Systems)
)
Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

WT Docket No. 96

PP Docket 93-253

To: The Commission

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COMMENTS ON INTERIM LICENSING PROPOSAL

Dennis C. Brown and Robert H. Schwaninger d/b/a Brown and Schwaninger respectfully submits its Comments on the Interim Licensing Proposal requested in the above-captioned proceeding. The Commission's proposal would unfairly disadvantage the small communications operator and that the Commission should, rather than adopting the licensing plan proposed, adopt a modified version of the plan. In support of its position, Brown and Schwaninger shows the following:

The Commission's Proposal Would Affect Large and Small Operators Unequally

The Commission's desire to "freeze" the application process for paging channels and to refuse acceptance of all applications to increase the service area of existing facilities should be modified to provide necessary relief to persons who were without notice or ability to prepare for this event. The Commission's actions would inadvertently chill the marketplace for small paging operators seeking to engage in minor expansion

of existing systems to serve the public of their market area with competitive service; and may impede those persons who are seeking to build out systems for which considerable resources have been expended.

The Commission's freeze appears to be premised upon a belief that persons who file initial applications do so in a manner which will create the entirety of a desired service area. Then, following the establishment of a "footprint," operators go back to request fill-in stations to improve coverage. Although this is one method of proceeding, it is not the only method and it is not the method often employed by small businesses.

Unlike large companies which are able to afford the filing of numerous applications to create a footprint, small business often employs a file-as-you-go system, requesting authority only after receiving an earlier requested grant. The reasons are obvious. The cost of filing an application requires expending legal costs, engineering costs, site lease costs, filing fees, coordination fees and other disbursements. When totalled, these costs can easily reach a thousand dollars per site. Although small business may be willing to pay such costs, following reasonable assurance of success, expending those same costs as "risk capital" is another matter. A small operator simply cannot afford to file a dozen applications to create a footprint from the beginning, hoping that each will be granted unopposed by the Commission; or guessing that none will be found to be mutually exclusive.

The Commission's announced freeze appears to lump all telecommunications providers together, expecting that the application methods employed by, say, PageNet, Inc. are the same as the application filing methods for Joe Smallguy d/b/a TinyComm Radio. This presumption is simply incorrect and the imposition of the freeze would, therefore, create an unequal adverse impact on small operators versus large.

Suggested Revision

We hereby recommend that the Commission modify the terms of its freeze to avoid the creation of unintentional harm to small business by excepting from any freeze applications seeking to increase a service area by no more than 50% of the presently authorized service contour of the system, provided that the entity requesting acceptance of such application(s) is licensed for a contiguous system which is no more than six transmitters in size in that relevant market and that grant of the application(s) would create an service area which overlaps the existing system. By acceptance of such applications, the Commission will not unintentionally bar the necessary growth of existing systems which are in their infancy. To do otherwise would be to create a risk of injury arising out of economic waste to small business which may be, for example, one-third of the way down the path toward construction of a paging system, only to have its expended resources rendered worthless by its inability to complete construction and provide a competitive service within a given market.

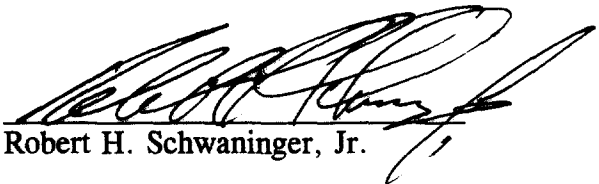
As the Commission is fully aware, a freeze upon the acceptance of applications has a devastating effect on small business. The promise of prompt auctions does little, if anything, to reduce the adverse effects on those same operators, who must consider whether auctions hold any true opportunity. Given the Commission's recent history in its 900 MHz auctions, small business must be extremely wary of any such offers. Accordingly, the Commission must demonstrate methods of licensing which will reduce the burden upon small business for the purpose of providing market access, now and in the future. We believe that this revision in the Commission's freeze will provide necessary relief for small operators and we respectfully urge the Commission's consideration of our suggestions.

Conclusion

For all the foregoing reasons, Brown and Schwaninger respectfully requests that the Commission lift its freeze on the acceptance of new paging applications or modify the freeze as described above.

Respectfully submitted,
BROWN AND SCHWANINGER

By



Robert H. Schwaninger, Jr.

Dated: February 29, 1996

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